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Plenary

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## **OPCAT**

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the United Nations in New York on the 18<sup>th</sup> of December 2002. In Poland it was ratified following prior statutory consent; it is therefore part of the Polish legal system and is directly applicable.

The tasks of the National Preventive Mechanism have been executed in Poland since the 18<sup>th</sup> of January 2008 by the Human Rights Defender.

The Constitution of the Republic of Poland and the Act on the Human Rights Defender ensure the Defender's independence from other state authorities. The Defender reports only to the Sejm, which is the lower chamber of the Polish parliament. Moreover, the Act provides for the access to information about the number of detained persons and detention places, as well as the possibility to enter all detention places in Poland. Efficient realisation of constitutional and statutory duties of the Defender is ensured by the work of an adequately organised Defender's Office.

The Optional Protocol to the Convention provides that State Parties have to guarantee the functional independence of the national preventive mechanism as well as the independence of their personnel. In Poland, no separate body has been created for the implementation of the tasks of the national preventive mechanism. Its function was vested in the Defender in the belief that this body meets all requirements of the Optional Protocol.

### **Let me begin with the DIFFICULTIES we have faced.**

Entrusting the function of a national preventive mechanism to the Human Rights Defender has its positive and negative sides. An important advantage when taking over this function was that the Defender had already had many years of experience resulting above all from follow-up visits carried out on the basis of complaints concerning detention centres. This experience allowed\* for the realisation of 73 visits in the first year of NPM's activity. Therefore, the implementation of the Optional Protocol did not require the creation of a separate body, which would have surely increased the costs of NPM's activity. Moreover, the Defender can apply other measures than recommendations, such as a motion to the Constitutional Tribunal, resulting from the Act on the Human Rights Defender.

However, a significant inconvenience in the realisation of the function of the NPM by the Human Rights Defender is that detained persons identify the visitors only as representatives of the Defender, and not of the NPM. As a result, such persons may be disappointed that the visit has a preventive character rather than a complaint mode and that during the visit they cannot file complaints with the Defender concerning their treatment. Representatives of the Defender, however, provide such persons with information as to how they can lodge a complaint. Another problem encountered by the Defender is that NPM's visits must be regular, carried out with appropriate frequency. However, so far this condition has not in fact been met. These circumstances result from insufficient financing of the Polish NPM, even though in consecutive draft budgets I requested increased expenditure in this respect. Nevertheless, in this year I have managed to employ 4 new people and therefore I could increase the visit frequency from 89 in 2011 to 122 in 2012.

Moreover, the Act on the Human Rights Defender does not provide for a separate budget for NPM, outside the general budget of the Office of the Human Rights Defender. There is therefore a risk that the future Human Rights Defender could decide that there are other priorities for a given year than the NPM's tasks, and allot only a small sum from the general budget for this purpose – too small for proper realisation of the obligations resulting from the Optional Protocol.

### **I shall now describe briefly our NPM TEAM**

The tasks of the NPM were performed mainly by six employees of the Criminal Executive Law Department. A Further ten employees of the Department including the director participated in the NPM preventive visits where necessary.

Employees of the Criminal Executive Law Department visited prisons, pre-trial detention centres, juvenile detention centres, juvenile shelters, youth care centres and youth sociotherapy centres, police emergency centres for children, rooms for detained persons within police organisational units and sobering stations.

In addition, the tasks of the Mechanism were performed by four employees of the Public Administration, Healthcare and Protection of Foreigners Department who carried out visits to centres for foreigners applying for refugee status or asylum, deportation custody centres, guarded centres for foreigners and psychiatric hospitals. Employees of that Department also supported the Labour Law and Social Insurance Department during visits to social care centres.

Those employees were employed full time and the majority of them performed NPM tasks from the moment this function was entrusted to the Human Rights Defender. In addition, the tasks of the NPM were performed by: five employees from the local groups in three major Polish cities who had been trained in the methodology of visits.

It should also be indicated that until the end of December 2010 all the employees listed above also carried out the statutory tasks of the Defender, i.e. they processed numerous letters from citizens.

On the 17<sup>th</sup> of October 2010, following the granting of a new statute to the Office of the Human Rights Defender by the Speaker of the Sejm, a National Preventive Mechanism Department was created. Since 2011, the activities of the Mechanism have been undertaken by one team visiting all types of places of detention referred to in Article 4 of the Optional Protocol. At present, the Department consists of eleven specialists, one director, one secretary and one expert – a general physician. Moreover, the Department's work can be supported by experts in the field of psychiatry and psychology. Continuous efforts are made to recruit experts in other fields.

**The next issue I shall touch upon is INTERNATIONAL CO-OPERATION**

The EU Eastern Partnership Countries' Ombudsman Cooperation Programme 2009-2013 is a joint initiative of the Polish Human Rights Defender and the former Mediator of the French Republic, presently the Defender of Rights of the French Republic. The programme is targeted at human rights protection institutions in countries covered by the Eastern Partnership, namely: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The purpose of the Programme is to enhance the capacity of ombudsmen, public administration bodies and non-governmental organisations from countries of the EU Eastern Partnership to protect the rights of individuals and build a democratic state under the rule of law. It is also an opportunity to exchange experiences related to the practical activities undertaken during NPM's visits in detention centres. NPM representatives provided our partners with information concerning the organisation and practical functioning of the Mechanism in Poland, and participated in visits to detention units in the countries I have just mentioned.

Moreover, representatives of the Polish NPM participate in a project of active cooperation between European national preventive mechanisms, financed by the Council of Europe and the European Union. The project includes workshops about organisation, conducting and reporting on prevention visits in various types of detention units. They are a great opportunity for exchanging experiences between NPMs and experts from the European Committee for the Prevention of Torture, UN Subcommittee on Prevention of Torture and Association for the Prevention of Torture.

**When it comes to CO-OPERATION WITH NON-GOVERNMENTAL ORGANISATIONS,**

the NPM's employees work closely in areas of interest that encompass the broadly construed prevention of torture and inhuman or degrading treatment or punishment. This collaboration consists principally in exchanging information about the situation of detained and arrested persons\* staying in various establishments across the country and the functioning of the NPM.

The major partner of the Defender in the function of the NPM in this area is the coalition of non-governmental organisations and academic circles called "Agreement for the Implementation of the OPCAT", consisting at present of: the Helsinki Foundation for Human Rights and other local associations and foundations in Poland.

Since its formation, the Coalition has supported the creation of the NPM in Poland. Presently, its guidance on the Mechanism's functioning and the follow-up reports from visits serves as a valuable tool for developing the instrument.

In its work the NPM uses reports from visits made by NGOs, which are an important source of data and opinion.

Cooperation between the National Preventive Mechanism and NGOs provides the opportunity to carry out an open discussion among experts. This allows the Mechanism to reach a wider audience and present them with standards set by NPM.

**The last point I need to mention is the role of the SOCIAL COUNCIL**

This body supports the Defender in performing statutory tasks, maintains contacts with public authorities and with other entities, in particular social organisations. At the request of the Human Rights Defender, members of the Social Council represent the Defender at meetings and other ceremonies. Some Council members or specialists recommended by them play the role of the NPM's experts for medicine and psychology.

Ladies and Gentleman, I would like to thank you for your attention and hope that we will have more time to discuss further details concerning the role of the NPM in Poland as well as its international experience later on.